

NORTHEAST COMMUNITY COLLEGE

ADMINISTRATIVE PROCEDURE NUMBER: AP-3237.0

FOR POLICY NUMBER: BP – 3237

ALCOHOL AND CONTROLLED SUBSTANCE TESTING FOR COMMERCIAL DRIVER'S LICENSE

1. PROCEDURE SUMMARY STATEMENT

To establish protocol relating to alcohol and controlled substance testing for commercial driver's license.

2. DEFINITIONS

- 2.1 Designated Employer Representative (DER) – an employee authorized by the College to take immediate action(s) to remove employees or applicable students from safety-sensitive duties, or cause employees or applicable students to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements. Service agents cannot act as DERs. The Director of Human Resources, Talent and HR Compliance is the DER for the College.
- 2.2 Federal Motor Carrier Safety Administration (FMCSA) – the lead federal government agency responsible for regulating and providing safety oversight of commercial motor vehicles (CMV). FMCSA partners with industry, safety advocates, and state and local governments to improve CMV safety through regulation, education, enforcement, research, and technology.
- 2.3 FMCSA Clearinghouse – a database that contains information pertaining to violations of the U.S. Department of Transportation (DOT) controlled substances and alcohol testing program for holders of commercial drivers' licenses (CDLs).
- 2.4 Limited Annual Query – limited queries to determine whether any data exists for a driver would be allowed and will only require general driver consent, subject to an FMCSA audit. The purpose of running a limited query is to ensure that a driver did not violate the drug and alcohol program with another employer.
- 2.5 Full Pre-Employment Query – full queries are conducted as a part of the pre-employment screening process, which means that the FMCSA must verify specific driver consent prior to releasing information. The purpose of running a full query is to ensure that the prospective employee or applicable student is eligible to drive.
- 2.6 Pre-employment Testing – a controlled substance and alcohol test will be conducted during post-offer, pre-employment process.

- 2.7 Post-Accident Testing – alcohol and controlled substance testing following any on-the-job accident involving property damage and/or physical injury to self or others.
- 2.8 Reasonable Suspicion Testing – alcohol and controlled substance testing that is a result of on-the-job suspected controlled substance or alcohol impairment or use.
- 2.9 Return to Duty Testing – alcohol and controlled substance testing that occurs prior to an employee or applicable student returning to duty after an on-the-job violation involving confirmed alcohol or controlled substance impairment or use.
- 2.10 Follow-up Testing – during the first twelve months following return to duty, an employee or applicable student will be subject to a minimum of six unannounced controlled substance or alcohol tests.
- 2.11 Controlled Substance – a substance which has been declared by federal or state law for sale or use, but may be dispensed under a licensed health care professional's prescription.
- 2.12 Illegal Controlled Substance – a substance whose use or possession is controlled by federal law but is not being used or possessed under the supervision of a licensed health care professional. (Controlled substances are listed in Schedules I-V of 21 C.F.R. Part 1308.)
- 2.13 Refusal to Cooperate – to obstruct the collection or testing process; to submit an altered, adulterated or substitute sample; to fail to show up for a scheduled test; to refuse to complete the requested controlled substance testing forms; or to fail to promptly provide specimen(s) for testing when directed to do so, without a valid medical basis for the failure.
- 2.14 Under the Influence of Alcohol – a blood alcohol concentration (BAC) equal to or greater than .04%, or actions, appearance, speech or bodily odors that reasonably cause a supervisor to conclude that an employee or applicable student is impaired because of alcohol use.
- 2.15 Under the Influence of Controlled Substances – a confirmed positive test result for illegal controlled substance use per this procedure. In addition, it means the misuse of legal controlled substances (prescription and over the counter) when there is not a valid prescription from a physician for the lawful use of a controlled substance in the course of medical treatment (containers must include the patient's name, the name of the substance, quantity/amount to be taken and the period of authorization).

3. PROCEDURE

3.1 General

- 3.1.1 The College will comply with federal law by contracting with a third-party for random selection of employees and applicable students to be tested, analysis of urine specimens, and maintenance of necessary records and reports through

a urine collection facility, medical review officer (MRO), blind testing, and a National Institute on Drug Abuse (NIDA)-certified laboratory. The third-party will also administer full and limited queries through the FMCSA Clearinghouse website for the College as required by the Clearinghouse rule.

- 3.1.2 The Clearinghouse rule requires FMCSA-regulated employers, MROs, Substance Abuse Professionals (SAPs), third-party administrators (TPAs), and other service agents to report to the Clearinghouse information related to violations of the drug and alcohol regulations in 49 Code of Federal Regulations, parts 40 and 382 by current and prospective employees and applicable students. The Clearinghouse will also require the following:
 - 3.1.2.1 Employers will be required to query the Clearinghouse for current and prospective employees and applicable students' drug and alcohol violations before permitting those employees applicable students to operate a CMV on public roads.
 - 3.1.2.2 Employers will be required to annually query the Clearinghouse for each driver they currently employ. All queries require driver consent.
 - 3.1.2.3 The Clearinghouse will provide FMCSA and employers the necessary tools to identify drivers who are prohibited from operating a CMV based on DOT drug and alcohol violations and to ensure that such drivers received the required evaluation and treatment before operating a CMV on public roads. Specifically, information maintained in the Clearinghouse will enable employers to identify drivers who commit a drug or alcohol program violation while working for one employer, but who fail to subsequently inform another employer (as required by current regulations). Records of drug and alcohol program violations will remain in the Clearinghouse for five (5) years, or until the driver has completed the return-to-duty process, whichever is later.
- 3.1.3 All tests will be conducted in accordance with the standards established by the DOT regulations. Time spent by an employee or applicable student traveling to and from and participating in a random, reasonable suspicion, post-accident or follow-up test will be considered duty time and will be compensable in accordance with applicable college policies and procedures. Tests will be conducted at a college-designated site which affords aural and visual privacy to the person being tested, sufficient to prevent unauthorized persons from seeing or hearing test results. All confirmed test results will be reported to the DER. Testing for controlled substance and alcohol use is required in the following circumstances:
 - 3.1.3.1 Pre-employment testing – as defined above in section 2.6;
 - 3.1.3.2 Post-accident testing – as defined above in section 2.7;

- 3.1.3.3 Random testing – Random testing will be conducted on an annual basis. The frequency of such tests and the number of employees and applicable students affected will be in accordance with the percentages established by the Federal Highway Administration and published in the Federal Register.
- 3.1.3.4 Employees and applicable students selected for random testing must immediately proceed to the college-designated collection site after being notified of selection. The DER should verify in a timely manner that employees and applicable students arrived at the site.
- 3.1.3.5 Physical Examinations – The DOT requires that employees and applicable students holding CDLs have a physical examination every two (2) years. If a random test was not conducted during the previous year, the employee or applicable student is required to be tested at that time. The medical examiner's certificate of the employee or applicable student's physical qualification to drive a motor vehicle must be provided to the DER.
- 3.1.3.6 Reasonable suspicion testing – as defined above in section 2.8;
- 3.1.3.7 Return to duty testing – as defined above in section 2.9; and,
- 3.1.3.8 Follow-up testing– as defined above in section 2.10.
- 3.1.4 Employees and applicable students in positions requiring a CDL are prohibited from the following:
 - 3.1.4.1 Using alcohol on the job;
 - 3.1.4.2 Using alcohol during the four hours prior to driving a commercial motor vehicle (CMV);
 - 3.1.4.3 Having an alcohol content concentration in the system of .02 or greater while driving a CMV;
 - 3.1.4.4 Using alcohol for eight hours following an accident or until a post-accident alcohol test is conducted, whichever occurs first;
 - 3.1.4.5 Refusing to take a required alcohol or controlled substance test;
 - 3.1.4.6 Using any controlled substance on or off duty without a written prescription from a Licensed Independent Practitioner (LIP) with prescriptive authority. Use of a prescribed controlled substance is not a violation if the employee or applicable student provides the College with an LIP's written certification that such therapeutic drug use will

not impair the CMV driver in the performance of safety-sensitive functions; and,

- 3.1.4.7 Possessing alcohol or a controlled substance on duty or during the operation of a CMV unless the alcohol or controlled substance is manifested and transported as part of a shipment.

3.2 Alcohol Testing

- 3.2.1 Alcohol tests will be performed at no cost to the employee. Academic program fees may be assessed for applicable students. Alcohol tests will be conducted by a trained breath alcohol technician (BAT) using an evidential breath testing device (EBT) approved by the National Highway Traffic Safety Administration and meeting the DOT requirements.
- 3.2.2 If the result of a screening test is an alcohol concentration of 0.02 or greater, a confirmation test will be performed. An employee or applicable student testing at a level between 0.02 and 0.039 will be immediately relieved from performing safety-sensitive functions for 24 hours. An employee or applicable student testing at a level of 0.04 or greater will be immediately relieved from performing safety-sensitive functions and will be referred to a substance abuse professional. Provisions of DOT requirements pertaining to alcohol concentration amounts will apply as amended.

3.3 Controlled Substance Testing

- 3.3.1 Controlled substance tests will be performed at no cost to the employee, except for split sample analysis, as noted below. Academic program fees may be assessed for applicable students participating in controlled substance tests. The collection-site person, in the presence of the employee or applicable student, will split the sample into two tamper proof containers. The required chain of custody procedures will be followed.
- 3.3.2 Each sample will be tested by enzyme immunoassay procedures (EMIT) for the presence of the following drugs: marijuana (THC metabolite), cocaine, amphetamines, opiates (including heroin), and phencyclidine (PCP). A screening test will be performed on the sample. If the sample is positive for one or more of the specified drugs, a confirmation test consisting of a gas chromatography/mass spectrometry (GC/MS) will be conducted for each identified drug.
- 3.3.3 All test results will be reviewed by an MRO. Prior to reporting positive results, the MRO will make every effort to contact the employee or applicable student to determine whether there is any alternative explanation for the presence of the controlled substance. If, after making all reasonable efforts and documenting them, the MRO is unable to reach the employee or applicable student directly, the MRO will contact the DER who shall direct the employee or applicable student to contact the MRO within seventy-two (72) hours. If the MRO

determines that the presence of the controlled substance is due to legitimate medical use, the test result will be reported as cancelled.

- 3.3.4 An employee or applicable student who has tested positive for a controlled substance will have the option of requesting that the other portion of the split sample be tested at another laboratory. This option must be exercised within seventy-two (72) hours of being notified by the MRO of a confirmed positive test. Payment for the split sample analysis is the responsibility of the employee or applicable student. If the split sample tests negative, or if for any reason the split sample is not available, the original test will be voided. The employee will not be subject to retest. If the split sample tests negative, the College will reimburse the employee or applicable student for the cost of the test. All confirmed tests will be reported to the DER.

3.4 Removal from Safety-Sensitive Duties

- 3.4.1 An employee or applicable student performing safety-sensitive duties who receives a confirmed positive test result will be immediately relieved from performing safety-sensitive functions and will be subject to disciplinary action. Disciplinary action will also be taken in the case of any confirmed positive test result, even in the absence of on-the-job impairment. Employees who are removed from duties due to suspected alcohol and/or controlled substance use may be placed on leave of absence with pay pending outcome of testing and determination of appropriate action.

3.5 Return to Duty

- 3.5.1 An employee or applicable student who has violated the alcohol and controlled substance standard cannot return to work or their academic program, in any capacity requiring a CDL, until they:

3.5.1.1 Comply with any treatment recommendation made by a substance abuse professional;

3.5.1.2 Test negative in a follow up test or have an alcohol concentration less than .02; and,

3.5.1.3 Sign a formal return-to-work/academic program agreement which specifies the conditions for continued employment/participation in an academic program.

- 3.5.2 An employee or applicable student returning to duty will be subject to follow-up testing.

3.6 Refusal to Test

- 3.6.1 Refusing to be tested, refusing to submit to post-accident testing, engaging in conduct that clearly obstructs the testing process, or failing to provide a release

will result in the employee or applicable student's removal from safety-sensitive functions, not being allowed to perform safety-sensitive functions in the future, and subjection to disciplinary action.

- 3.6.2 Leaving the scene of an accident before a test is administered and failure to remain readily available for testing will be deemed as refusal to submit to testing.

3.7 Record Retention and Confidentiality

3.7.1 The College or its agents, any contractor involved in the testing process, the medical review officer, and the substance abuse professional, if applicable, will maintain records of alcohol and controlled substance testing under strict confidentiality as required by the Federal Highway Administration. Information regarding individual test results and records will not be released to others without the written consent of the employee or applicable student, except as prescribed by law. The College shall report any negative return-to-duty (RTD) test results and the successful completion of a driver's follow-up testing plan through the Clearinghouse. The information must be reported by the close of the third business day after the DER is informed. The College shall also report any drug and alcohol violations through the Clearinghouse. This will include alcohol test results with a concentration of .04 or greater, refusals to take an alcohol or drug test, as well as actual knowledge of a violation.

3.7.2 Law prescribes that certain information be released to DOT agencies when license or certification actions may be required and that information may be released to a decision maker in a grievance, arbitration, litigation, or administrative proceeding arising from a positive test result or an employee or applicable student-initiated action.

3.8 Training

3.8.1 All employees and applicable students in positions covered by requirements of the Omnibus Transportation Employee Testing Act of 1991 or supervising such employees and applicable students will receive information regarding policy and procedures, which includes the policy concerning alcohol and controlled substance testing and the procedures established by the College to enforce the policy.

3.8.2 All supervisory employees designated by the College to determine whether reasonable suspicion exists to require testing for alcohol or controlled substance use will receive at least two (2) hours of training on the physical, behavioral, speech, and performance indicators of alcohol misuse and controlled substance use.

4. APPLICABILITY

N/A

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DIVISIONS/DEPARTMENT RESPONSIBLE FOR REVIEW & UPDATE: Human Resources

SPONSORING DIVISION/DEPARTMENT: Human Resources

RELATED PROCEDURES/ REFERENCE: Omnibus Transportation Employee Testing Act of 1991; Department of Transportation (DOT) Regulations; Federal Motor Carrier Administration (FMCSA; Clearinghouse Final Rule

PROCEDURE KEY WORDS: DOT; Department of Transportation; alcohol; controlled substance; CDL; commercial driver's license; Clearinghouse; FMCSA; Federal Motor Carrier Administration